

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ORIGINAL D&F  
C/M

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THE ANNUITY, PENSION, WELFARE AND  
TRAINING FUNDS OF THE INTERNATIONAL  
UNION OF OPERATING ENGINEERS LOCAL  
14-14B, AFL-CIO, by its trustees, et al.,

**MEMORANDUM AND ORDER**  
Case No. 07-CV-4294 (FB)

Plaintiffs,

-against-

HERITAGE STEEL CORPORATION,

Defendant.

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*Appearance:*

*For the Plaintiffs:*

JAMES MICHAEL STEINBERG, ESQ.  
Brady, McGuire & Steinberg, LLP  
603 Warburton Avenue  
Hastings-on-Hudson, New York 10706

**BLOCK, Senior District Judge:**

Acting on a referral from the Court, Magistrate Judge Roanne Mann has issued a Report and Recommendation ("R&R") recommending (1) that the Court order the defendant to submit to an audit by plaintiffs of its payroll and related records for the relevant period, and (2) that the plaintiff's request for fees and costs be denied without prejudice as premature. The R&R recited that "[a]ny objections to the recommendations contained in this Report and Recommendation must be filed with Judge Block on or before June 30, 2008," and that "[f]ailure to file objections in a timely manner may waive a right to appeal the District Court order." R&R at 5. A copy of the R&R was sent to the

defendant via Federal Express to both addresses on file with the New York Department of State. To date, no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will excuse the failure to object, however, and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

Since there is nothing in Magistrate Judge Mann’s R&R that suggests plain error or, for that matter, any error, the Court adopts it without *de novo* review.

**SO ORDERED.**

s/Frederic Block

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~~FREDERIC BLOCK~~

Senior United States District Judge

Brooklyn, New York  
September 10, 2008